IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.900 OF 2005
IN
SUIT NO.967 OF 1984

Shreeji Friends Co-op.Hsc.Sc.Ltd. ..Plaintiffs.

V/s.

M/s.Jyoti & Co. & Ors. ..Defendants.

Ms.J.M.Sidhwa i/b Ms.R.Peerbhoy for plaintiffs.

Ms.Kavita Shah for Defendant Nos.1,2 and 4.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 25, 2005.

P.C. :

1. Heard counsel for the parties.

2. By this application, plaintiffs are praying for amendment of the plaint in terms of Schedule annexed to the chamber summons. The plaintiff intends to insert in paragraph-1 after last sentence that "Defendant No.3 who was a partner of Defendant No.1 expired on 18.3.1997. Defendant No.2 & 4 as the surviving partners are liable to the claim of the plaintiffs." This amendment is opposed by the counsel for the defendant on the argument that defendant No.1 is a proprietary concern. The basis on which the amendment is sought is therefore, incorrect. In my

opinion, as the plaintiffs have approached this court on the assertion that the defendant No.1 is partnership firm, whether the defendant no.1 is a partnership firm or proprietary concern is a matter which will be considered at trial. Going by the plaintiffs' case as it is that defendant No.1 is a partnership firm, defendant No.3 is one of the partners who has expired, for which, the plaintiffs are entitled to amendment to insert the above said sentences in paragraph-1 of the plaint.

2. The other amendment sought by the plaintiffs is to insert paragraph 13(a), whereby the plaintiffs intend to place on record the fact that there are some proceedings between the plaintiff and defendants No.5 to 9, in which settlement was arrived at by filing consent terms; under which such rights have been acquired by the plaintiff. That being subsequent event, plaintiffs are entitled for the proposed amendment.

3. This request is however, opposed by the counsel for the defendants on the argument that no explanation is offered as to what prevented the plaintiffs to carry out such amendment when the consent terms were filed as back as on 1st October,

2001. This submission, in my opinion, is rightly countered by the plaintiffs on the argument that after filing of consent terms, plaintiffs were required to apply to the Charity Commissioner for permission under Section 36(1) (a) of the Bombay Public Trust Act. The plaintiffs are still waiting for the said sanction. However, as no definite period is known when such sanction will be granted, the plaintiffs have approached this court to bring on record the relevant facts without seeking any further relief. As cause of action will not change, no prejudice would cause to the defendants, if the proposed amendment is granted.

4. Accordingly, this chamber summons ought to succeed in terms of prayer clause (a), (b) and (c). Amendment be carried out within 8 weeks.

5. It will be open to the defendants to file additional written statement after proposed amendment is effected by the plaintiffs.

6. Application is disposed of in the above terms.